

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MICHAEL M. FRASER,  
as an individual and on  
behalf of all others  
similarly situated,

No. 2:11-cv-00598-MCE-CKD

Plaintiff,

v.

MEMORANDUM AND ORDER

GENESCO, INC.,

Defendant.

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On March 3, 2011, Plaintiff Michael Fraser ("Fraser") initiated this putative class action against Genesco, Inc. ("Genesco"), alleging violations of California's Song-Beverly Credit Card Act of 1971, California Civil Code § 1747, et seq., and Unfair Competition Law, California Business & Professions Code § 17200.

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1 Presently before the Court is the parties' Joint Motion to  
2 Transfer this case to the Northern District of California  
3 pursuant to 28 U.S.C. § 1404(a) ("Motion"). For the following  
4 reasons, the parties' Motion is GRANTED.<sup>1</sup>

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6 **BACKGROUND**

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8 In his Complaint before this Court, Fraser alleges that  
9 Genesco impermissibly requests customers' personal identification  
10 information when conducting retail credit card purchase  
11 transactions. At approximately the same time Fraser filed his  
12 suit, another individual, Frank Pabst ("Pabst"), filed a separate  
13 class action, this one in the Northern District of California,  
14 also arising out of Genesco's alleged violations of the Song-  
15 Beverly Credit Card Act and California common law. Request for  
16 Judicial Notice, ¶ 2, Exh. 2. Pabst subsequently filed a Motion  
17 to Transfer and Coordinate Multidistrict Litigation with the  
18 Judicial Panel on Multidistrict Litigation ("JPML") pursuant to  
19 28 U.S.C. § 1407, which governs multi-district litigation  
20 ("MDL"). Id., ¶ 3, Exh. 3 at 2 and Schedule B. Pending the  
21 JPML's decision, parties in both the Fraser action and the Pabst  
22 action filed joint motions to stay those proceedings, which were  
23 granted.

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27 <sup>1</sup> Because oral argument will not be of material assistance,  
28 the Court ordered this matter submitted on the briefing. E.D.  
Cal. Local Rule 230(g).

The JPML has since denied the parties' MDL request. Id., ¶ 3, Exh. 3 at 3-4. Despite the JPML's finding that the cases "unquestionably involve common factual and legal issues," the JPML determined that each of the cases could have been brought in any district in California and that transfer pursuant to 28 U.S.C. § 1404(a) was thus the preferable mechanism under which to proceed. Id.

On August 31, 2011, parties in the Fraser action thus filed the instant Motion to transfer this case to the Northern District. The parties argue their request should be granted because: 1) they stipulate to the transfer for the purpose of consolidating the Fraser and Pabst actions; 2) absent transfer, there is a high risk that multiple courts could issue inconsistent rulings; 3) absent transfer, the parties will be required to inefficiently duplicate their efforts in different courts; 4) the Northern District is a more convenient forum for the parties and witnesses; 5) the Northern District's docket is less congested than the Eastern District's docket; and 6) the JPML endorsed the use of discretionary transfers, as opposed to § 1407 procedures, to coordinate these actions. The parties' arguments are well-taken.

## STANDARD

A court may transfer a case to another district for the convenience of parties and witnesses, and in the interests of justice. 28 U.S.C. § 1404(a) provides for such transfer, stating in pertinent part as follows:

1 For the convenience of parties and witnesses, in the  
2 interest of justice, a district court may transfer any  
3 action to any other district or division where it might  
have been brought.

4 The Court has discretion in deciding whether such transfer  
5 is warranted based on an "individualized, case-by-case  
6 consideration of convenience and fairness." Van Dusen v.  
7 Barrack, 376 U.S. 612, 622 (1964). As the language of the  
8 transfer statute suggests, in order to prevail on a motion to  
9 transfer under § 1404(a), the moving party must show that the new  
10 forum is one in which the action could originally have been  
11 brought. Commodity Futures Trading Comm'n v. Savage, 611 F.2d  
12 270, 278-79 (9th Cir. 1979). Once the Court determines a case  
13 could have been brought before the proposed transferee court,  
14 here the Northern District of California, it must consider a  
15 number of private and public factors relating to the interests of  
16 the parties and the judiciary, including: 1) the plaintiff's  
17 choice of forum; 2) convenience of the parties; 3) the convenience  
18 of the witnesses; 4) the ease of access to the evidence; 5) the  
19 familiarity of each forum with the applicable law; 6) the local  
20 interest in the controversy; and 7) administrative difficulties  
21 flowing from court congestion in the respective potential forums.  
22 Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843  
23 (9th Cir. 1986).

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## ANALYSIS

As stated above, in determining the propriety of transfer under 28 U.S.C. § 1404(a) the Court must first look to whether the proposed transferee district, here the Northern District of California, is one in which Plaintiffs' action could originally have been brought. Commodity Futures Trading Comm'n, 611 F.2d at 279. If that inquiry yields a positive result, the Court must then examine a number of factors relating to the interests of both the parties and the judiciary, including the plaintiff's choice of forum, the convenience of the parties and the witnesses, access to evidence, local interests, and relative court congestion. Decker Coal, 805 F.2d at 843.

The preliminary question is easily answered here. It is uncontroverted that this action could have been brought in the Northern District of California. The Northern District, like this Court, has subject matter jurisdiction over Fraser's claims pursuant to 28 U.S.C. § 1332(d)(2) because Fraser and other putative class members are California citizens and Genesco is a Tennessee citizen. See Fraser Complaint, ¶ 1. In addition, the putative class members' claims exceed \$5,000,000. Id. As such, the Northern District, like this Court, has subject matter jurisdiction over this case.

Genesco is likewise subject to the Northern District's personal jurisdiction. Genesco conducts a substantial amount of business within that district and thus satisfies the minimum contact requirements.

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1 See Motion, 6:8-10; Int'l Shoe Co. v. Washington, 326 U.S. 310,  
2 316 (1945) (Due process requires that the nonresident defendant  
3 have certain "minimum contacts" with the forum, such that the  
4 exercise of jurisdiction does not offend "traditional notions of  
5 fair play and substantial justice."); Boschetto v. Hansing,  
6 539 F.3d 1011, 1015 (9th Cir. 2008) (California long arm statute  
7 allows the exercise of jurisdiction to the full extent permitted  
8 by federal constitutional due process.). Indeed, by filing this  
9 Joint Motion, Genesco concedes it is subject to personal  
10 jurisdiction in the transferee Court. Finally, for the same  
11 reasons personal jurisdiction over Genesco is proper in the  
12 Northern District, venue is likewise appropriate there as well.

13 See 28 U.S.C. § 1391(a)(1) (Venue is proper in "a judicial  
14 district where any defendant resides."); id., § 1391(c) ("For  
15 purposes of venue under this chapter, a defendant that is a  
16 corporation shall be deemed to reside in any judicial district in  
17 which it is subject to personal jurisdiction at the time the  
18 action is commenced.")

19 Having determined that this case could have been brought in  
20 the Northern District, the inquiry then shifts to the remaining  
21 considerations that must be weighed in determining whether a  
22 transfer from the Eastern District to the Northern District is  
23 appropriate. First, Fraser's choice of forum will not be  
24 undermined by a transfer in this case because Fraser agrees that  
25 litigating in the Northern District is appropriate. Moreover,  
26 even if Fraser had not stipulated to the instant transfer, his  
27 choice of forum would be accorded little weight in light of the  
28 strength of the remaining factors.

1 See Lou v. Belzberg, 834 F.2d 730, 739 (9th Cir. 1987) ("[W]hen  
2 an individual brings a derivative suit or represents a class, the  
3 named plaintiff's choice of forum is given less weight.).

4 Moreover, the parties all agree that the Northern District  
5 presents a more convenient forum for both the parties and the  
6 witnesses because, among other things, Genesco's counsel is  
7 located in San Francisco and because the potential consolidation  
8 of these actions in a single district would prevent all persons  
9 involved from having to travel to multiple venues within  
10 California to litigate substantially similar, if not identical,  
11 claims. In addition, travel to and from the Northern District,  
12 which is served by three major airports offering direct flights  
13 is more convenient than travel into the Eastern District's only  
14 major airport that is, at times, reachable only via connecting  
15 flights through either San Francisco or Los Angeles.

16 The parties also accurately point out that the caseload of  
17 courts in the Northern District is markedly less than that of  
18 courts in the Eastern District such that consideration of court  
19 congestion also favors transfer.

20 Finally, and perhaps most persuasively, the parties intend  
21 to seek consolidation of this action with the Pabst action upon  
22 transfer. Notably, their prior attempt at consolidation via the  
23 JPML failed not because these actions are unrelated, but because,  
24 at least in part, the Panel deemed transfer via § 1404(a) to be  
25 preferable alternative to MDL. There being no obstacle to  
26 transfer under § 1404(a), this Court agrees.

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1 Indeed, transfer pursuant to § 1404(a) will serve judicial  
2 economy because the Fraser action arises out of the same common  
3 set of facts and law as does the Pabst action. Accordingly, even  
4 if not consolidated, litigating these cases before the same  
5 court, will diminish the likelihood that conflicting decisions  
6 are issued on a whole host of issues from discovery, to class  
7 certification, to, eventually, the merits. In addition, transfer  
8 will minimize the duplication of efforts, and the potential for  
9 wasted resources, by both the parties and the courts. In sum,  
10 transfer of this action to the Northern District, where this  
11 action could originally have been filed, is proper because it  
12 will serve the ends of justice and the convenience of the courts,  
13 the parties and the witnesses.

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15 **CONCLUSION**

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17 For the reasons just stated, the parties' Joint Motion to  
18 Transfer (ECF No. 20) is GRANTED. The Clerk of the Court is  
19 directed to transfer this case to the Northern District of  
20 California.

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IT IS SO ORDERED.

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Dated: September 28, 2011

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MORRISON C. ENGLAND, JR.  
UNITED STATES DISTRICT JUDGE

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